

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

**ORDER RE MARCH 2 HEARING RE
POTENTIAL MASSIAH VIOLATION
ASSERTED BY DEFENDANT FLORES**

MORIS FLORES, *et al.*

Defendants.

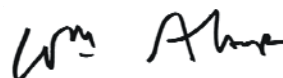
A sealed February 18 order set a March 2 evidentiary hearing with respect to two specific statements challenged by defendant Moris Flores as having been elicited in violation of *Massiah v. United States*, 377 U.S. 201 (1964). Subsequent to the setting of that hearing, the government notified all parties in an unsworn filing that it will not use one of the challenged statements at trial and that the other challenged statement was elicited in 2006 — well before the filing of the indictment in October 2008 — and when defendant Flores was out of custody (Dkt. No. 3571, 3584). Nonetheless, the evidentiary hearing will go forward on **MARCH 2 AT 7:30 A.M.** to confirm whether the statement by defendant Flores was indeed elicited in 2006. If a sufficient showing is made to confirm this assertion, the evidentiary hearing will come to an end. If not, it will proceed.

The hearing will only be held with respect to the single statement by defendant Flores which remains at issue. No other defendants provided further submissions — as invited to by the Court — regarding specific *Massiah* violations that may have occurred as to them with respect to the witness at issue. To be clear, however, the evidentiary hearing scheduled for

1 March 2 at 1:00 p.m. regarding the specific statements elicited by the witness challenged by
2 defendant Erick Lopez remains on calendar.

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4 **IT IS SO ORDERED.**

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6 Dated: February 28, 2011.



7 WILLIAM ALSUP
8 UNITED STATES DISTRICT JUDGE
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